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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 14-13254-scc

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In the Matter of:

199 EAST 7TH STREET LLC,

Debtor.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

February 6, 2017

1:56 PM

B E F O R E:

HON. SHELLEY C. CHAPMAN

U.S. BANKRUPTCY JUDGE

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Doc #168 Order to show cause (A) scheduling a hearing regarding
this Court's January 18, 2017 contempt decision and order and
(B) directing David Carlebach, Esq. to show cause at such
hearing why he should not be taken into custody

Transcribed by: David Rutt
eScribers, LLC
352 Seventh Avenue, Suite #604
New York, NY 10001
(973)406-2250
operations@escribers.net

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A P P E A R A N C E S:

TOGUT, SEGAL & SEGAL LLP

Attorneys for Albert Togut, Chapter 7 Trustee

One Penn Plaza

New York, NY 10119

BY: NEIL BERGER, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE

Attorneys for Office of the United States Trustee

201 Varick Street

Suite 1006

New York, NY 10014

BY: ANDREW VELEZ-RIVERA, ESQ.

SERENE NAKANO, ESQ.

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TOGUT, SEGAL & SEGAL LLP

Attorneys for Chapter 7 interim trustee

One Penn Plaza

New York, NY 10119

BY: NEIL BERGER, ESQ.

ALSO APPEARING:

ALBERT TOGUT, ESQ., Chapter 7 Trustee (TELEPHONICALLY)

ERIC WEISS, U.S. Marshals Service

1 P R O C E E D I N G S

2 THE COURT: All right, we're going to go on the record
3 in the case of 199 East 7th Street, case number 14-13254.
4 Mr. Berger.

5 MR. BERGER: Good afternoon, Judge. Neil Berger at
6 Togut, Segal & Segal, for Albert Togut, Chapter 7 trustee. My
7 client, Albert Togut, is participating on phone.

8 THE COURT: All right, Mr. Togut, are you there?

9 MR. TOGUT: I am, Your Honor.

10 THE COURT: All right, thank you. Let me bring
11 everybody up to speed since there have been a number of
12 developments.

13 MR. GOTTLIEB: Your Honor, I just want to make sure
14 you --

15 THE COURT: Sure.

16 MR. GOTTLIEB: -- you note my appearance. It's
17 Lawrence Gottlieb on behalf of James Guarino, principal of the
18 debtor.

19 THE COURT: All right. Thank you, Mr. Gottlieb.

20 So, let me take a few moments to bring everybody up to
21 speed, since a lot has happened and I just want to make sure
22 everybody is aware of it.

23 Okay. Late last week, on February 2nd, entered at
24 docket 168 in my case, I issued an order to show cause,
25 scheduling a hearing and directing Mr. Carlebach to show cause,

1 at the hearing, why he should not be taken into custody. And
2 that was returnable on February 6th at 1:30, which is right
3 now.

4 Subsequent to the issuance of that order to show cause
5 and bench warrant, Mr. Carlebach took an appeal in the New
6 Jersey District Court; he took an appeal from Bankruptcy Judge
7 Gravelle's order, which had been entered a couple of days
8 before that, reflecting her opinion that the imposition of the
9 automatic stay in Mr. Carlebach's Chapter 13 case, which had
10 been commenced before her on January 26, did not in any way
11 preclude this Court, or indeed Mr. Berger, from proceeding to
12 enforce the civil-contempt sanctions that were outstanding
13 against him.

14 Mr. Carlebach sought a stay of Judge Gravelle's ruling
15 from Judge Gravelle; that stay was denied. Mr. Carlebach filed
16 an appeal to the district court of the District of New Jersey;
17 the matter was assigned to Judge Freda Wolfson. And this
18 morning, Judge Wolfson entered a six-page reasoned decision
19 indicating that the automatic stay related to the Chapter 13
20 case in fact did not preclude Mr. Berger or this Court from
21 proceeding to enforce the civil-contempt sanctions inasmuch as,
22 to summarize, that those sanctions were intended to uphold the
23 dignity of the Court.

24 So, that's where we were as of late morning. We then
25 received a letter from Mr. Carlebach, which has been

1 docketed -- I don't have the docket number -- in which he
2 writes that, quote, "I write with respect to the bench warrant
3 and order to show cause of February 3rd, 2017. As the Court
4 may be aware, I have sought appellate review of Judge
5 Gravelle's decision in my personal bankruptcy case, to release
6 the temporary restraints, based on controlling law in the Third
7 Circuit. Judge Wolfson of the District Court of New Jersey
8 denied my emergency stay, as well, this morning. I will be
9 shortly filing a notice of appeal in the Third Circuit to have
10 the Third Circuit opine with finality on the issue. I intend
11 on moving by emergency appeal in that regard and expect an
12 expedited decision from the circuit on the stay issue.

13 "I had hoped to finish this process by today, but
14 Judge Wolfson was not in on Friday, which delayed the matter
15 slightly. I would prefer to be able to seek this relief
16 without the threat of imminent incarceration. I would ask that
17 the Court delay the effectuation of the incarceration order for
18 an additional two days or through February 8th, 2017, in order
19 to allow me to make the motion before the Third Circuit. If
20 the Third Circuit denies my stay request, I will voluntarily
21 comply with the trustee's request.

22 "Respectfully,

23 "David Carlebach"

24 Virtually moments after we received that letter and we
25 placed it on the docket, we received a subsequent letter from

1 Mr. Carlebach, in which he says the following; and again, I
2 don't have the docket number for that letter, but it was
3 received, I would say, within the last half an hour:

4 "Dear Judge Chapman,

5 "This is to withdraw my earlier letter of today,
6 requesting a stay to pursue an appeal in the Third Circuit.
7 After further inquiry, it appears that I will face a
8 significant procedural hurdle, in that Judge Wolfson's order
9 was an interlocutory order and there is no appeal as of right
10 (sic) to the Third Circuit.

11 "As such, I have decided to forego that process and
12 will endeavor to comply with all the trustee's demands. Given
13 my involvement in that process, I need one day to put
14 everything together. I therefore ask that today's hearing be
15 adjourned to tomorrow afternoon, at which point I hope to have
16 purged the contempt and this matter can be put to rest.

17 "Respectfully,

18 "David Carlebach"

19 Okay, so the time is now 2 o'clock. The order to show
20 cause was returnable at 1:30 and, as far as I can tell looking
21 around the courtroom, Mr. Carlebach is not present in the
22 courtroom. Mr. Berger, do you see Mr. Carlebach present in the
23 courtroom?

24 MR. BERGER: No, Judge, I don't.

25 THE COURT: All right. So, where that brings us is

1 that in addition to all of the previous contempts which remain
2 extant, Mr. Carlebach is today in contempt of the order to show
3 cause, which was entered at docket 168, directing that he be
4 present today to purge his contempt or be taken into custody by
5 the U.S. Marshals.

6 So, by my count, Mr. Berger, this matter has now
7 touched five federal judges.

8 MR. BERGER: Our count --

9 THE COURT: Am I counting correctly?

10 MR. BERGER: No. You --

11 THE COURT: Six.

12 MR. BERGER: Six.

13 THE COURT: I'm sorry. It started with me; it then
14 went to --

15 MR. BERGER: To --

16 THE COURT: -- Judge Sullivan, Judge McMahon, and
17 Judge Abrams in the Southern District of New York.

18 MR. BERGER: And then Judge Gravelle --

19 THE COURT: Then went over to Judge Gravelle in the
20 bankruptcy court of New Jersey, and then up to Judge Wolfson in
21 the District Court --

22 MR. BERGER: That would make six.

23 THE COURT: -- of New Jersey. So, I think that -- I
24 think that we have occupied enough time of federal judges in
25 this matter.

1 So, Mr. Berger, what's the status of the subpoena to
2 Citibank, which, if I'm following the chronology directly, the
3 motion to quash that subpoena, which was denied by me, was
4 appealed to Judge Abrams? She denied a stay with respect to
5 that, and she also declined to take up an appeal on that. So,
6 that subpoena is now outstanding and it is not stayed by any
7 existing order, correct --

8 MR. BERGER: As we --

9 THE COURT: -- putting aside whether or not we -- you
10 or I believe that it ever was stayed by the Chapter 13 stay,
11 right?

12 MR. BERGER: Correct observation, Your Honor.
13 Citibank was required to have fully complied with the subpoena
14 on the 30th. Citibank is watching very closely what happens in
15 this and any number of courts.

16 I've been in communication with the assistant general
17 counsel at Citibank; they want to comply. I think the last
18 time I was here, I said something to the effect that they're
19 watching what happens here and they want direction.

20 They have not fully complied, and it is not based upon
21 my conversations with Citibank, because they are resisting
22 compliance. As they describe it, it's like a conveyor belt:
23 you begin to gather the documents from microfiche copies of
24 wire confirmations, checks, bank statements. But they have
25 seen, it seems, every other day Mr. Carlebach filing a motion,

1 an appeal, a Chapter 13 petition, sending them a letter the
2 stay is in effect. So, they -- it's on and off the conveyor
3 belt.

4 We've gotten some bank statements and I can briefly
5 tell you what we're seeing. What we're seeing is an incomplete
6 picture, but it's a picture that not only doesn't answer our
7 questions but raises some questions in our mind. For instance,
8 you may recall -- and this is not by way of evidence, but it is
9 responding to your question where are we with Citibank -- a
10 couple of hearings ago, we were here and we were looking at --
11 and I have in my hand redacted bank statements; I handed up
12 copies to Mr. Carlebach, I produced them. And particularly, we
13 were curious about a half-a-million-dollar check.

14 THE COURT: Right.

15 MR. BERGER: This is the check that has no date --

16 THE COURT: Right.

17 MR. BERGER: -- and no account number. It appears to
18 have been redacted in violation of your Rule 2004 order and
19 your subsequent injunctive-relief order.

20 The accounting that Mr. Carlebach gave us -- and I
21 handed a copy of that up to the Court as well -- lists a number
22 of deposits; they start in 2015 and then they refer to 2016
23 deposits. Clear that could not have been. And it's an error
24 that these events -- or all the sale and the stalking-horse
25 process begin 2015.

1 But Mr. Carlebach lists in June 2006 (sic) -- no
2 specific date -- a deposit of 500,000 dollars. At about that
3 time -- and I'm gathering information now from Mr. Guarino's
4 production -- Mr. Carlebach did receive a half-million-dollar
5 check from Mr. Strulovitz (sic), but on June 25th, 2015
6 Mr. Guarino wrote to Mr. Carlebach, "Please do not deposit the
7 check, and messenger the contract to my office."

8 On June 9 -- I'm sorry -- on October -- I'm sorry -- a
9 few days later, on July 7th there's a 500,000-dollar deposit
10 into Mr. Carlebach's deposit (sic). We can't tell yet who it's
11 from, because Citibank is gathering the deposit slips for us.

12 On June -- on October 9th, 2015, just a few weeks
13 before the closing, there's yet another half-million-dollar
14 deposit into that IOLA account, from an individual who's -- who
15 I found on the internet is a real-estate investor. At this --
16 at or around the same time, as we look at the docket for this
17 case, there are letters being filed by parties who are engaged
18 as stalking-horse bidders in the process, saying, I want my
19 money back, what's happening with the sale?

20 As an attorney for a trustee, that rings bells in our
21 mind: what's happening with money on deposit, why isn't the
22 sale moving forward, why isn't the sale order being complied
23 with and deposits and breakup fees being repaid. I can't say
24 today --

25 THE COURT: Have you matched that, in terms of the

1 time line, with what was I being told about what was happening
2 in the sale? Because if you'll recall, the sale was postponed.

3 MR. BERGER: The sale hearing was postponed.

4 THE COURT: Postponed. And then the sale hear -- the
5 auction -- not the sale hearing -- the auction was unilaterally
6 cancelled. Right?

7 MR. BERGER: Right.

8 THE COURT: So, there was --

9 MR. BERGER: Right.

10 THE COURT: -- that time frame.

11 MR. BERGER: This is happening during that period.

12 Having said what I've said, I'm not in a position to
13 draw conclusions. But the trustee's subpoena required
14 Mr. Carlebach to respond at the end of September, and here we
15 are, four or five months later, asking ourselves what really
16 happened. And we're asking ourselves what really happened,
17 because we have no compliance by Mr. Carlebach. And we don't
18 have full compliance by Citibank, because Mr. Carlebach has
19 filed any number of pleadings and petitions; so, they'd
20 started, stopped, started, stopped. And, again, from -- based
21 upon my conversation with Citibank as late as late Friday, they
22 want to comply and they will comply, absent a stay. They see
23 each pleading that he files and they also see the orders that
24 Your Honor enters, Judge Abram enters, now the New Jersey
25 Bankruptcy Court and the New Jersey District Court. So, I'm

1 hoping that now they see this morning's decision and the
2 conveyor-belt search running again, and we'll get those
3 documents coming in.

4 I should say, Your Honor, that as I look at Your
5 Honor's order to show cause, scheduling today's hearing, on
6 page 2 you do reference "subsequent to arrest", but I think
7 Your Honor's intent is very clear that Mr. Carlebach was
8 required to have file -- would be required to file a letter
9 clearly and unambiguously standing (sic) that he is ready,
10 willing, and able to immediately comply with the Court's prior
11 orders, other than with respect to the monetary sanctions, and
12 provide evidence of his ability to comply.

13 And in the most recent letter received within the last
14 hour or so, Mr. Carlebach says, "I will endeavor to comply with
15 the trustee's request. I hope to have purged". I've been in
16 front of Your Honor for half a year on this case, and we've
17 heard those promises.

18 THE COURT: It's the same language that's always been
19 used; it's that he hopes, it's that he'll endeavor.

20 MR. BERGER: And, Your Honor --

21 THE COURT: It's not a firm commitment.

22 MR. BERGER: And, Your Honor, just so the record is
23 clear, because Mr. Carlebach continues to focus just on the
24 IOLA accounts, we still don't have a written response in
25 compli -- a written response from Mr. Carlebach in compliance

1 with the Rule 2004 order.

2 THE COURT: Well, that was the -- the construct of the
3 order to show cause, which I'm sure is not lost on you but
4 perhaps was not clear to Mr. Carlebach, was that because the
5 trustee had embarked on this alternative route to get the bank
6 records from Citibank, you could have been in the position of
7 having gotten what you needed, without his having complied with
8 that aspect of the trustee 2004 order and subpoena. And what I
9 had set up was to enable him, once you got those documents, for
10 you to be able to say that you had gotten all the bank records,
11 and then all that would be left for Mr. Carlebach to do would
12 be to certify or raise his right hand and make a representation
13 under oath that he was done, that there were no further
14 documents.

15 So, we are nowhere near that, because with his focus
16 on preventing the production of the Citibank documents, he's
17 entirely neglected to address the outstanding items otherwise
18 requested by the trustee's subpoena, which include, off the top
19 of my head, the time records, the draft plan and disclosure
20 statement, and the missing documents that you were able to
21 identify from the mirror-image production that Mr. Guarino
22 made, correct?

23 MR. BERGER: Correct, Your Honor. That's the
24 intersect of the --

25 THE COURT: Right.

1 MR. BERGER: -- where you are heading and where I'm
2 heading is that even once we get production from Citibank, we
3 have questions -- so, we're missing employee emails, his
4 emails, time records, copies of pleadings -- so, that
5 ultimately when we get to the point of sitting down and having
6 Mr. Carlebach answer questions under oath, as the trustee's
7 attorney, and the trustee sitting with me at that deposition,
8 we can ask informed questions rather than asking questions and
9 being asked to rely upon hearsay. So, there are a host of
10 other documents that we don't have and that we need to get the
11 full picture.

12 THE COURT: So, what's the -- and I see folks from the
13 U.S. Trustee's office are here, and I'll ask to speak to you in
14 a moment.

15 So, in light of everything that we have today, what's
16 the trustee's view?

17 MR. BERGER: Our view is that we have zero confidence
18 in what Mr. Carlebach has written today that he will endeavor
19 to comply and that he hoped -- he hopes to purge himself.
20 We've been down this road before, Your Honor. We don't have
21 any confidence in those words, and we --

22 THE COURT: Do you recall probably about six weeks ago
23 Mr. Carlebach asked for an adjournment so that he could hire
24 criminal-defense counsel?

25 MR. BERGER: I do recall that, and I've never heard

1 from or seen criminal (sic) counsel being hired by
2 Mr. Carlebach. And I'll tell Your Honor that when I was in the
3 bankruptcy court in Trenton last week, I was surprised not to
4 see Mr. Carlebach in that courtroom hearing.

5 THE COURT: Yes, well, I can surmise why he wasn't
6 there --

7 MR. BERGER: Yes --

8 THE COURT: -- Mr. Berger.

9 MR. BERGER: -- but I was also surprised not to see
10 his bankruptcy attorney not --

11 THE COURT: Who was also on the phone --

12 MR. BERGER: Who was on the phone.

13 THE COURT: -- which I could tell by reading the
14 transcript --

15 MR. BERGER: Yes.

16 THE COURT: -- which I assume they appeared
17 telephonically with Judge Gravelle's permission. But, be that
18 as it may.

19 Okay --

20 MR. TOGUT: Your Honor, this is the trustee.

21 THE COURT: Yes, Mr. Togut.

22 MR. TOGUT: Just to say it; the amount of effort that
23 Mr. Carlebach has expended in blocking my questions greatly
24 surpasses the amount of effort it would have taken for him to
25 simply cooperate in the investigation. I got to a point where

1 I put in one of our pleadings that he's got something to hide.
2 I believe that more so now than ever. And I don't believe that
3 relying on his good faith and good efforts and all that is
4 going to get us where we need to be.

5 I think, frankly, he hasn't complied because he's
6 afraid to comply, because of what we're going to find out when
7 he does have to finally give us the information.

8 THE COURT: All right, let me --

9 Thank you, Mr. Togut.

10 THE COURT: Let me hear from --

11 MR. TOGUT: Thank you.

12 THE COURT: -- U.S. Trustee, Mr. Velez-Rivera.

13 MR. VELEZ-RIVERA: Good afternoon, Your Honor.

14 THE COURT: I also want to add that the Chapter 13
15 filing, based on my review of the documents, is, as they say,
16 very barebones. It's entirely unclear to me whether or not
17 it's a good-faith bona fide filing. That's not a decision
18 before me. That's for Judge Gravelle to decide.

19 But the whole concept of having been denied a stay not
20 simply by me but by Judge Abrams, and those proceedings having
21 been constructed with delays built into them, specifically in
22 order to afford Mr. Carlebach the opportunity for Article 3
23 review, and then, after his being denied a stay by Judge
24 Abrams, having had the audacity to file a Chapter 13 petition,
25 which, as far as I can tell, is completely specious, takes us

1 to a whole different level in terms of what Mr. Carlebach as an
2 officer of the court is willing to do to avoid the disclosures
3 that are being sought in this case.

4 So, Mr. Velez-Rivera, I saw that you two were in
5 Trenton with Mr. Berger.

6 MR. VELEZ-RIVERA: Indeed, Your Honor. And
7 Mr. Carlebach's absence in the proceedings, as well as the
8 absence of his lawyer, Mr. Duke (ph.), was actually quite
9 shocking to those of us who were in the courtroom. Judge
10 Gravelle --

11 THE COURT: And the U.S. Trustee for the -- for Region
12 3 --

13 MR. VELEZ-RIVERA: Region 3. My counterpart from --

14 THE COURT: -- was there as well.

15 MR. VELEZ-RIVERA: My counterpart from New Jersey was
16 there as well, Your Honor. My counterpart as well as the
17 Chapter 13 trustee have several questions about the legitimacy
18 of the filing, both venue-based and content-based, in that
19 jurisdiction. They will follow up.

20 It is -- it's extremely difficult to stand before you
21 today, having witnessed the proceedings and been involved over
22 several months, and think that Mr. Carlebach will comply within
23 a twenty-four-hour period from today. He's withdrawn a letter
24 promising to comply, and substituted it with a letter that says
25 he will endeavor to comply. That speaks volumes about

1 Mr. Carlebach's efforts, Your Honor.

2 My office and, I doubt, the Chapter 7 trustee have
3 received no indications from Mr. Carlebach within the past
4 couple of weeks that he's made progress with respect to his
5 compliance. We have no confidence whatsoever.

6 We filed a statement about a month ago in this court,
7 indicating that the issuance of a bench warrant was within the
8 Court's discretion. We still stand by those words, Your Honor.

9 THE COURT: Okay. All right, I think all of you who
10 have been involved in this for the past six months know, and
11 the orders that I've entered and the transcripts that are in
12 existence reflect, my deep hope that this could have been
13 avoided. And I believe Judge Abrams, in her ruling, quoted
14 chapter and verse on the many opportunities that Mr. Carlebach
15 has been given to take a different course and avoid all this.

16 I will also note that in the pleadings that continue
17 to be filed in the New Jersey court, the same themes were put
18 forth by Mr. Carlebach, which in sum and substance is that none
19 of the documents should have been asked for in the first place,
20 this original case was a highly successful case, and this is
21 all an unjustified pursuit of him. And that position has now
22 been rejected perhaps most forcefully by Judge Sullivan, who
23 indicated that if the case on the merits had come before him,
24 he would have been inclined to sanction Mr. Carlebach.

25 So, much as this is an extraordinary event that I

1 deeply regret, the bench warrant is outstanding, it is
2 execut -- it is executable right now, and it remains executable
3 Monday through Thursday, from 7 a.m. in the morning until
4 4 p.m. in the afternoon.

5 Two details that I'd like to work out, though. The
6 warrant provides that if the certification is provided to you,
7 Mr. Togut, or your counsel Mr. Berger, that I would immediately
8 convene a hearing in order to release Mr. Carlebach from
9 custody so that we could establish his compliance. And that
10 remains a very important part of this procedure. So, in the
11 event that he is incarcerated, he ought to be given the first
12 available opportunity to make a certification that he's
13 prepared to purge, and we ought to be in a position to do that.
14 To the extent that I am not available, I could either do that
15 on a hearing that would be set up telephonically or I could ask
16 one of my colleagues here in the building to hold an emergency
17 hearing.

18 My other concern is the following: As far as I am
19 aware, based on representations that Mr. Carlebach has made to
20 me in regard to scheduling and other matters, I believe that
21 Mr. Carlebach is an observant Jew, and therefore I have
22 particular concerns with his being incarcerated during -- from
23 Friday evening at sundown, through Saturday evening at the
24 conclusion of the Jewish Sabbath.

25 I don't quite know what to do about that, other than

1 ask the U.S. Marshals Service to ensure that he be given every
2 accommodation necessary in order for him to practice his
3 religious observance, including making kosher meals available
4 to him. And in the event that he were to seek to be released
5 for that period of time, I would entertain that request on the
6 representation that he would surrender himself for
7 incarceration once that period was over and in the absence of
8 his compliance.

9 Now, Mr. Berger, to the extent that you receive from
10 Citibank documents that you believe otherwise satisfy the
11 outstanding requests under the trustee's subpoena, that you let
12 us know so that the universe of what Mr. Carlebach is required
13 to do can be narrowed.

14 Next is that, because the Chapter 13 remains pending,
15 I'm going to take a conservative view and say that the payment
16 of sanctions has been suspended. Given that one could
17 characterize that as a pre-petition obligation, I'm not sure
18 whether it is or not. But for the purposes of his complying
19 now, we are not looking at the sanctions that had accrued.

20 With respect to what's been happening since the filing
21 of the Chapter 13 position -- petition, the trustee in this
22 case has a reservation of rights to file an application seeking
23 to be reimbursed all of his expenses incurred in connection
24 with the pursuit of this matter in the New Jersey Bankruptcy
25 Court and the New Jersey District Court and, indeed, here

1 today. And to the extent that the Chapter 13 remains pending,
2 it would be my view that after seeking a liquidation of those
3 sums here, you would be able to file that as an administrative
4 claim in the Chapter 13 case, because the expense associated
5 with this exercise has obviously been exorbitant.

6 What have I forgotten?

7 MR. BERGER: Neil Berger for the trustee. I don't
8 think that you have forgotten anything. I'll certainly advise
9 the Court as soon as Citibank completes its production, and
10 we --

11 THE COURT: Just to be clear, what I contemplated was
12 that even if incarcerated with an attorney's assistance,
13 Mr. Carlebach could cause to be filed the certification that
14 would bring this episode to an end.

15 MR. BERGER: I read the same thing, Judge.

16 THE COURT: Okay.

17 MR. BERGER: I read the same thing. Beyond that, I
18 don't think that you have -- I don't think that you've missed
19 anything, and appreciate your observations. We made clear in
20 the New Jersey Bankruptcy Court that this was not a matter of
21 collection as we enforce Your Honor's order. And we certainly
22 will file a document in the Chapter 13, to make sure that
23 everyone, including the Chapter 13 trustee and Mr. Carlebach by
24 his attorneys, know that we are asserting our claim for
25 reimbursement of all the fees and expenses that we've incurred

1 as a result of this process; and certainly to the extent that
2 they have been incurred post-Chapter 13 file (sic), they would
3 be administrative-expense priority claims.

4 THE COURT: Right. Okay, well, I would ask that you
5 keep in close touch with the inspectors from the U.S. Marshals
6 Service, who are now in charge of this. And --

7 MR. TOGUT: Your Honor, may I ask a question?

8 THE COURT: Yes, Mr. Togut.

9 MR. TOGUT: I am way, way, way outside my area of
10 expertise, and I may be completely out of bounds too. But we
11 have had, as you noted, a tremendously difficult time trying to
12 get compliance. Hopefully this latest sanction will succeed
13 and we'll be done with this. But my concern, frankly, is, if
14 he's trying to hide something, there may be a risk of him
15 fleeing the jurisdiction. And --

16 THE COURT: Well, the -- my --

17 MR. TOGUT: -- I --

18 THE COURT: -- my warrant is nationwide. So, are
19 you --

20 MR. TOGUT: No, I -- yeah, okay, well, he could also
21 go visit somebody outside the U.S.; that's not what I'm talking
22 about at the moment, though. And I take your point,
23 completely, about respecting his religious beliefs. But if
24 he's not purged his contempt and he is to leave incarceration
25 while that is the situation, shouldn't there be a requirement

1 for an ankle bracelet so that the Marshals Service can keep
2 track of him?

3 THE COURT: Hold on a second. Someone's coming up who
4 actually knows something about this.

5 MR. WEISS: I --

6 THE COURT: Yes, Inspector Weiss.

7 MR. WEISS: Eric Weiss from the U.S. Marshals --

8 THE COURT: Can you come up to the -- come up to the
9 podium.

10 MR. WEISS: Excuse the attire; I was on the street
11 this morning.

12 THE COURT: It's okay.

13 So, Mr. Togut, the trustee, is asking about an ankle
14 bracelet, which is beyond my area of expertise as well. Is
15 that something that would require a magistrate judge or some
16 other judge to issue an order pertaining to that?

17 MR. WEISS: That is correct; an order would have to be
18 drafted by a magistrate judge. As far as his religious stuff,
19 while incarcerated they make reasonable accommodations to make
20 sure that, practicing whatever faith you are, you're able to do
21 so while incarcerated.

22 THE COURT: Okay, well, we'll leave it there. And
23 I'll let Mr. Berger speak to Mr. Weiss and determine whether
24 and how that all would go about. That's beyond something that
25 I believe I have the capability of doing. But if the --

1 Mr. Togut, if you feel that that's important, we would have to
2 put the burden on Mr. Berger to figure out a procedural
3 mechanism for accomplishing that.

4 MR. TOGUT: Unfortunately, Your Honor, I just don't
5 have confidence that, absent this sanction, we're going to be
6 able to conclude the investigation; no confidence whatsoever.

7 THE COURT: Ms. Nakano has --

8 MS. NAKANO: Yeah, Serene Nakano --

9 THE COURT: -- risen.

10 MS. NAKANO: -- for the U.S. Trustee's office.

11 Your Honor, I'm a former Assistant U.S. Attorney in
12 the criminal division. There may come a point where this case
13 crosses into criminal contempt. As Your Honor knows, our
14 office has statutory duties with respect to referrals, and we
15 are closely monitoring this case, to see whether it has crossed
16 the line or will cross the line.

17 MR. BERGER: Your Honor, as I was reflecting upon
18 your -- it's Neil Berger for the trustee.

19 As I was reflecting upon your earlier statements and
20 your request that I keep the marshal and the other parties-in-
21 interest and chambers advised about Citibank's compliance, it
22 occurred to me -- and I'm just putting this out there so it's
23 on the horizon if we need to cross that bridge; but we do see
24 deposits into the IOLA account, from Mr. Carlebach's law-
25 practice account at a different bank, post-petition, pre-

1 trustee. I don't know where that will lead us, but it is
2 entirely possible than an issue may be -- a subpoena may be
3 issued, pursuant to Your Honor's order, for that other bank
4 account. Deposits into the IOLA account at or about the time
5 when things were heading sideways --

6 THE COURT: Yep.

7 MR. BERGER: -- doesn't --

8 THE COURT: It's not --

9 MR. BERGER: -- doesn't cause us to say not to worry;
10 it causes us to say, "What was that about?"

11 THE COURT: Okay. It is what it is. It's not a
12 problem of your creation. It's not a problem of my creation.
13 This entire situation could have been obviated by compliance
14 back in September, October, November, December, or January, and
15 there is none.

16 So, I don't think that I have to enter any other order
17 today. To the extent that anything does get filed in either
18 the Second Circuit or the Third Circuit, I would just simply
19 ask that somebody let us know. And I am reachable 24-7 in the
20 event that something happens that I need to know about.

21 MR. BERGER: Thank you, Judge. Now --

22 THE COURT: And I just again appreciate the efforts of
23 the Office of the United States Trustee and very much
24 appreciate the efforts of Mr. Togut and his counsel in pursuing
25 this for as long and as hard as you have been.

1 MR. BERGER: There's a job to be done, Judge, and
2 we'll --

3 THE COURT: Well --

4 MR. BERGER: -- continue to do it.

5 THE COURT: -- you know how -- you know that I regret
6 that we're here, but -- there it is. Okay?

7 MR. BERGER: Thank you, Judge.

8 MR. VELEZ-RIVERA: Thank you, Judge.

9 MS. NAKANO: Thank you, Your Honor.

10 THE COURT: Okay. Thank you.

11 MR. TOGUT: Thank you.

12 THE COURT: Thank you.

13 (Whereupon these proceedings were concluded at 2:31 PM)

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C E R T I F I C A T I O N

I, David Rutt, certify that the foregoing transcript is a true
and accurate record of the proceedings.



David Rutt (CET-635)
AAERT Certified Electronic Transcriber

eScribers
352 Seventh Ave., Suite #607
New York, NY 10001

Date: February 8, 2017

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